



POLICE DEPARTMENT

In the Matter of the Disciplinary Proceedings

- against -

: FINAL

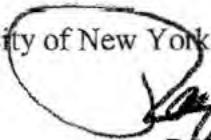
Police Officer Timothy Bergin : ORDER

Tax Registry No. 906272 : OF

Brooklyn Court Section : DISMISSAL

Police Officer Timothy Bergin, Tax Registry No. 906272, Shield No. 21163, Social Security No. ending in [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 2010-1809, 2010-2899, 2011-5328, 2011 6064 and 2011-6736, as set forth on form P.D. 468-121, dated July 23, 2010, June 22, 2011, February 3, 2012, March 15, 2012 and March 14, 2012, and after a review of the entire record, has been found Guilty as Charged.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Timothy Bergin from the Police Service of the City of New York.


RAYMOND W. KELLY
POLICE COMMISSIONER

EFFECTIVE: On May 20, 2013 @0001 Hours.



POLICE DEPARTMENT

May 2, 2013

In the Matter of the Charges and Specifications : Case Nos. 2010-1809,
- against - : 2010-2899,
Police Officer Timothy Bergin : 2011-5328,
Tax Registry No. 906272 : 2011-6064 &
Brooklyn Court Section : 2011-6736

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable Martin G. Karopkin
Deputy Commissioner - Trials

A P P E A R A N C E:

For the Department: Mark Berger, Esq.
Christine Maloney, Esq.
Nancy Slater, Esq.
Department Advocate's Office
One Police Plaza
New York, New York 10038

For the Respondent: Stephen Worth, Esq.
Worth, Longworth & London, LLP
111 John Street – Suite 640
New York, NY 10038

To:

HONORABLE RAYMOND W. KELLY
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

The above-named members of the Department appeared before me on February 6, 2013, February 21, 2013, and April 3, 2013, charged with the following:

Disciplinary Case No. 2010-1809

1. Said Police Officer Timothy Bergin, assigned to 90th Precinct, while on duty, on or about February 9, 2009, did wrongfully and without just cause utilize one or more Department computers to make inquiries unrelated to the official business of the Department or the City of New York, in that he improperly utilized a Department computer to ascertain information for his personal use.

P.G. 219-14, Page 1, Paragraph 2 DEPARTMENT COMPUTER SYSTEMS

2. Said Police Officer Timothy Bergin, assigned to 90th Precinct, while on duty, on November 18, 2009, did wrongfully cause false entries to be made in Department records, to wit Said Police Officer wrongfully prepared at least 25 summonses using falsified information.

P.G. 203 05, Page 1, Paragraph 4 – PERFORMANCE ON DUTY GENERAL

Disciplinary Case No. 2010 2899

1. Said Police Officer Timothy Bergin, assigned to 90th Precinct, while on duty, on or about August 2, 2010, did fail to properly perform his duties as directed by competent authority, in that said officer did fail to conduct a street survey. *(As amended)*

P.G. 203 05, Page 1, Paragraph 1 PERFORMANCE ON DUTY GENERAL
GENERAL REGULATIONS

2. Said Police Officer Timothy Bergin, assigned to 90th Precinct, while on duty, on or about July 15, 2010, did fail to properly fill out a Criminal Court Summons. *(As amended)*

P.G. 209 04, Page 1, Paragraph 1 SUMMONS RETURN DATE AND TIME

3. Said Police Officer Timothy Bergin, assigned to 90th Precinct, on or about August 23, 2010, was absent without leave from said officer's scheduled tour. *(As amended)*

P.G. 203 05, Page 1, Paragraphs 1 and 2 PERFORMANCE ON DUTY
GENERAL

P.G. 205 18, Pages 1 and 2 – ABSENT WITHOUT LEAVE PERSONNEL
MATTERS

4. Said Police Officer Timothy Bergin, assigned to 90th Precinct, on or about and between March 31, 2010 and August 25, 2010, on three occasions, did fail to appear at Traffic Court. *(As amended)*

P.G. 211-01, Page 1, Paragraph 1 – DUTIES AND CONDUCT IN COURT
COURT AND AGENCY APPEARANCES

5. Said Police Officer Timothy Bergin, assigned to 90th Precinct, on or about and between January 1, 2010 and May 1, 2011, on twenty four occasions, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, in that said officer did report late for duty. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT, GENERAL
REGULATIONS

6. Said Police Officer Timothy Bergin, assigned to 90th Precinct, on or about February 7, 2011, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, in that said officer, after previously being denied a request for an E-day by a supervisor known to the Department, did request permission for an E-day from a different supervisor known to the Department. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT, GENERAL
REGULATIONS

Disciplinary Case No. 2011-5328

1. Said Police Officer Timothy Bergin, assigned to Housing PSA 8, on or about and between January 1, 2007, and November 30, 2007, in [REDACTED] County, did steal approximately \$28,506.56 in United States (US) Currency from an individual known to the Department. *(As amended)*

New York State Penal Law Section 155.35 GRAND LARCENY IN THE
THIRD DEGREE

Disciplinary Case No. 2011-6064

1. Said Police Officer Timothy Bergin, assigned to PSA 8/VIPER 4, at a location known to the Department in Bronx County, on or about and between August 5, 2011 and February 26, 2012, on approximately seventeen (17) occasions, reported for duty after the start of his scheduled tour.

P.G. 203-03, Page 1, Paragraph 3 COMPLIANCE WITH ORDERS

2. Said Police Officer Timothy Bergin, assigned to PSA 8/VIPER 4, on or about September 12, 2011, did wrongfully engage in conduct prejudicial to the good order,

efficiency and discipline of the Department, in that said officer, after failing to report present for duty, did not request and E-day until approximately three and one-half (3 1/2) hours after the start of his scheduled tour.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT PROHIBITED CONDUCT, GENERAL REGULATIONS

3. Said Police Officer Timothy Bergin, assigned to PSA 8/VIPER 4, on or about March 11, 2012, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, in that said officer made false and misleading statements to Lieutenant Dennis Azambuja, PSA 8 Second Platoon Commander, regarding an alleged prior approval for lost time.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT - PROHIBITED CONDUCT, GENERAL REGULATIONS

Disciplinary Case No. 2011-6736

1. Said Police Officer Timothy Bergin, assigned to Housing/PSA 8, on or about November 18, 2011, during an official Department Interview conducted by Sergeant Francesco Frangella, Internal Affairs Bureau Group #31, pursuant to the provisions of Patrol Guide Section 206 13, did intentionally and wrongfully make false statements.

P.G. 203-08, Page 1, Paragraph 1 – PUBLIC CONTACT GENERAL

The Department was represented by Mark Berger, Christine Maloney, and Nancy Slater, Esqs., Department Advocate's Office, and Respondent was represented by Stephen Worth, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to Specification No. 6 of Disciplinary Case No. 2010-2899, the sole specification of Disciplinary Case No. 2011 5328, Specification Nos. 2 and 3 of Disciplinary Case No. 2011-6064 and the sole specification of Disciplinary Case No. 2011-6736. He pleaded Guilty to both specifications of Disciplinary Case No. 2010-1809, Specification Nos. 1 through 5 of Disciplinary Case No. 2010-2899, and Specification No. 1 of Disciplinary Case No.

2011 6064. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2010-1809

Respondent having pleaded Guilty is found Guilty as charged.

Disciplinary Case No. 2010-2899

Respondent, having pleaded Guilty, is found Guilty of Specification Nos. 1, 2, 3, 4 and 5. Respondent is found Not Guilty of Specification No. 6.

Disciplinary Case No. 2011-5328

Respondent is found Guilty of the single specification in this case.

Disciplinary Case No. 2011-6064

Respondent, having pleaded Guilty, is found Guilty of Specification No. 1. Respondent is found Guilty of Specification Nos. 2 and 3.

Disciplinary Case No. 2011 6736

Respondent is found Guilty of the single specification in this case.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

Department called Police Officer Kathleen Vigiano (retired), Brian Shanahan, Carolyn Porras; Sergeants Francesco Frangella, Rosemary Davis, Christopher Groben and Ricardo Campos; and Lieutenants Dennis Azambuja and Karl Webber.

Police Officer Kathleen Vigiano (retired)

Vigiano is a retired member of this Department who last served in the 75 Precinct. She retired in 2007 after having served 20 years with the Department. She has maintained contact with the Department by going to fundraising events like hockey games, golf outings and other precinct functions.

Prior to her retirement, in 2006 she met Respondent in New Orleans. They developed a relationship and after a time Respondent stayed at her home, in [REDACTED] [REDACTED] "a lot." She said he stayed there, "just about every night." She said that prior to living with her he stayed in his grandmother's apartment in [REDACTED]

Vigiano testified that Respondent did not contribute to the household expenses. She said that Respondent interacted with her three children and they would go to events, he would take them shopping for food or take them Christmas shopping. She said that Respondent spent her money on these things.

Vigiano said the she gave Respondent access to her Citibank ATM card and gave him the PIN number. He did not have unlimited access to the account but she let him use it for expenses related to her children. Vigiano was the sole owner of that account.

Vigiano also had a joint account with her mother, Kathleen Owens at Commerce Bank. She noted that her father had been a police officer and that when he died his pension stopped and her mother was living only on Social Security. Vigiano said that she put money she received from a life insurance policy in that account so her mother would have funds.

Vigiano noted her husband, who had been a member of this Department, died on September 11, 2001. Her brother-in law, who was a New York City firefighter also died that day. Vigiano never granted Respondent access to the Commerce Bank account. However the PIN number on that account was the same as the PIN on the Citibank account.

Vigiano testified that she believed she had lost the ATM card for the Commerce Bank account. She obtained a new card but did not deactivate the old card because she believed she had left it in an article of clothing. Vigiano testified that she did not regularly monitor that account. She said when she got the statement she usually put it aside because it was not a bill. She agreed that she was not a good record keeper.

Sometime near the end of 2007 she did check the account statement and saw that money had been taken out of that account. She tried to call her mother to see if she had withdrawn money but was unable to reach her. She was aware that her mother told her about very minor expenses. Then she thought someone must be stealing from the account. She went to Respondent and told him that someone was stealing from the account and he responded that he had done it. He said he had "borrowed some money." She said she had been unaware of any borrowing and he did not "really" reply.

She asked him how long he had been taking money from the account and he did not know. He could not say if it was one time event. He did not know if he had been taking money for one week, a month, a year. She said that she told him, "How could you not know?"

Vigiano said she then went to her computer and wrote a statement saying that he, Respondent, had taken money from her account. She testified that she told him that he had to repay the money and that if he did not sign it she would call the police. She said he agreed to repay her and signed the document which was placed in evidence (Department's Exhibit [DX] 1). It reads as follows:

Receipt for Monies Taken	December 6,2007
<p>I Timothy Bergin to promise to repay Kathleen Vigiano the sum of monies taken from Commerce Bank Account she shares jointly with Kathleen Owens.</p> <p>Not less than \$8,000 and not more than \$30,000.00</p> <p>The correct Sum of which will be determined by Kathleen when all bank statements are accounted for.</p> <p>The total of all monies taken will be paid back by Nov 1, 2008. Payment schedule will be not less than \$800.00 a month which includes PBA checks and Tax returns. Until payment has been made in full.</p>  <p>Timothy Bergin</p>	

Vigiano testified that she came up with the range of \$8,000 to \$30,000 based on the amount of money that had been taken out that month and because she knew approximately how much should have been in the account.

She later reviewed past bank statements and determined that the actual amount was about \$28,500. She said that Respondent has since returned some of the money, about three or four thousand dollars. She said that she had hired an attorney and at that point Respondent stopped paying. The last payment he made was sometime in 2008.

Vigiano testified that after the letter was signed their relationship continued on and off. She said the relationship ended for good in 2009. She then corrected the date to 2008 but said she was not sure.

Vigiano indicated that during the period following the letter she may have given him her ATM card to buy something at the store but that she was monitoring her accounts.

Vigiano testified that she made the Department aware of the situation with her bank account. She said that she received some summonses for Respondent's car at her house and realized that his car was registered there. She called her delegate and told him to have Respondent get his car registration changed. When she continued to get summonses she called the 90 Precinct and spoke with a lieutenant regarding the improperly registered car.

During her discussion with the lieutenant in which she was explaining how she knew Respondent the subject of the bank account came up.

Vigiano said she never gave Respondent permission to use the ATM card for the joint account that she held with her mother. She believed she might have told Respondent that she used the same PIN number on multiple accounts. She never gave Respondent permission to withdraw money from that joint account or to borrow money from that account.

Vigiano acknowledged that on the day that Respondent signed the letter she spoke to a friend of hers, who she used to work with, who is now a Suffolk County police officer. She did not bring this case to the District Attorney's office.

She said she did not make a criminal complaint, "Because if I made a police report it would be public information. I did not want it to be public knowledge." She said the reason for this was that it would be embarrassing.

On cross-examination, Vigiano agreed that her relationship with Respondent began in 2006. She denied that he moved into her home but agreed he stayed seven nights a week and sometimes five. She said he still had his place with his grandmother with his "stuff" in it. She agreed that the majority of the time he stayed with her. She agreed he had some clothes in her house. Vigiano agreed that shortly after they met in New Orleans Respondent started to stay over at her house. She said that the last time he stayed over was in 2008.

Vigiano agreed that the relationship continued after the December 6, 2007 statement signed by Respondent (DX 1) but she stated their relationship was not continuous, that they broke up and got back together, several times. She agreed that there was a conversation about having a child together. She said this consideration of having a child together was not the reason she put off collecting the money from Respondent but she did acknowledge that they had contemplated a long-term relationship.

Vigiano agreed that Respondent had a relationship with her children and that he took them places and bought things for them; however, she noted that this was with her money. She stated, "I thought he was a nice guy because he was coming back with things for my kids. I didn't know he was taking it out of my account."

She testified that Respondent complied with her requests to take her kids out and buy things.

Vigiano denied that she kept her credit cards in the kitchen cabinet. She stated that she kept the Commerce Bank card in her wallet. Vigiano testified that when she asked Respondent where he got that card he told her that he got it from the bathroom and that she leaves stuff all over her house.

Vigiano stated that at that time she had about four credit/debit cards. She indicated that they did not all have the same PIN number. She said Respondent used two of those cards, one with her permission and one without her permission. She agreed that she received a substantial sum of money after her husband's death on 9/11. When asked if she had only four cards to manage the money she noted that credit cards do not manage money. She said only two cards had PIN numbers. Vigiano denied leaving the cards around and stated that she kept them in her pocketbook and wallet. She agreed that she had said that she thought she had lost a card perhaps in a sweater or coat.

She agreed that in December 2007 she opened a bank statement and saw that money was not there. She agreed that she said someone had been stealing the money. She agreed she said that to Respondent and he indicated that he took the money. She agreed there was no need for an investigation. She agreed that she told Respondent that if he did not sign the statement she would go to the police.

Vigiano denied that she continued to talk with Respondent about having a child after December 6, 2007, but indicated that she would have to look at her medical records to be certain.

Vigiano testified that after that date Respondent moved out. She then corrected herself and stated that he "went back to his apartment." However, she agreed that he came back a few months later and that they discussed having a child together.

She agreed that Respondent did not pay her back. While the agreement called for an \$800 a month payment she said that he "started out with a thousand and it dwindled." She agreed that he did not pay the \$800 monthly as agreed. She noted that he always had excuses such as that his check was being garnished. Vigiano agreed that she hired a lawyer, [REDACTED], to collect the money and that he attempted to serve papers on Respondent.

Vigiano agreed that she did not go to the [REDACTED] County or [REDACTED] County Police Departments nor did she go to this Department to report the matter. She stated that she did go to the Patrolmen's Benevolent Association (PBA) for advice. She agreed that she did not want the Internal Affairs Bureau (IAB) to open a log. She agreed that this was because of the embarrassment issue.

She agreed that she did not go to the [REDACTED] County or [REDACTED] County District Attorney's offices to have him arrested. She agreed that when she initially called the 90 Precinct her main concern was to get Respondent to "unregister" his cars from her house. She volunteered that she was trying to take the PBA's advice. She acknowledged that she spoke to a lieutenant but did not remember his name. She agreed that her conversation with the PBA had nothing to do with this conversation. She did not recall exactly what she told the lieutenant. Whereupon, on consent, the IAB report was read to the witness by counsel for Respondent:

She, meaning you, informed Lieutenant Coffey that she used to date the S/O, meaning subject officer, about a year

ago and they are now in court for a financial dispute over money that subject officer took out of their joint bank account.

When asked if this report refreshed her recollection Vigiano testified that she was not in court and never had a joint bank account with Respondent.¹

On redirect examination, Vigiano said, based on her conversations with “the PBA,” it was “suggested” that she not pursue the matter criminally.

On re-cross examination Vigiano agreed that she went to the PBA and they had not come to her. She denied that she tried to prevent Respondent from becoming a union trustee. She said that she went to the PBA for advice and that this occurred before she called the 90 Precinct. She clarified that her first visit to the PBA occurred right after she had discovered money taken from the account. She agreed that she continued to discuss having a child with Respondent after her first visit to the PBA but denied that her relationship with Respondent was more important to her than anything the PBA had to tell her. She agreed that she did not wait two years to report this matter because of the PBA.

Vigiano agreed that she had told IAB that Respondent had embezzled money from the Emerald Society and she was not sure what the result of that complaint was. (The Advocate stipulated that Respondent was never charged with embezzling money from the Emerald Society).

¹ A further section of the report was also read into the record at the conclusion of Vigiano’s testimony. That section indicated that Vigiano was mainly upset about Respondent using her address without her permission.

Brian Shanahan

Shanahan is a Supervisory Special Agent with the Drug Enforcement Administration (DEA). On March 11, 2010 he received a call from Special Agent Carolyn Porras who is a Special Agent who he supervised at the time. Porras advised him that she had been in car accident which involved striking a pedestrian in Brooklyn. He along with several agents responded to the scene. He ascertained that police officers had been there but were no longer on the scene when he arrived.

While at the scene he contacted a friend and colleague who worked at the Drug Enforcement Task Force (DETF) for assistance in obtaining a copy of the accident report for Porras. He explained that accident report had to be submitted to his agency. As a result of his phone call he told Porras to go the 90 Precinct and see "Officer Bergin" (Respondent). He had received the information about meeting Respondent from Detective [John] Cutty.

Shanahan testified that later that evening he received a call from Porras who advised him that she had the report and that it contained her home address. He said he instructed her to go back to the precinct and explain that it was a DEA vehicle and that the address should be 99 Tenth Avenue in Manhattan, the DEA's New York field division office. Porras, he said, had also told him that the complainant/victim also resided in the same building as she did.

On cross-examination, Shanahan agreed that Cutty is a friend who is a member of this Department. He knows that Cutty is a detectives' union representative. He said his recollection was that he called Cutty from the scene and not before. He agreed that Porras had told him that she had spoken to two female police officers. He is not sure

what Porras told him at the time and he said he may have learned later that the pedestrian went to the hospital.

Carolyn Porras

Porras is a Special Agent with the DEA. She was not working on March 11, 2010. She had parked her official government vehicle on the corner of Montrose Avenue and Lorimer Streets in Brooklyn. She decided to move her vehicle to the other side of the street in front of her building.

She said she was right at the corner and the light was red. She saw a man with a cane attempting to cross and she gave him the right of way. He was walking, she said, very slowly. She said he stopped in the middle of the street, she assumed, waiting for her to go but she was letting him continue. She said he did not continue so after waiting a few seconds she decided to proceed. "No sooner did I put my foot on the gas, he started to cross, and so I hit him," she explained.

She exited the vehicle; the man was on the floor, she called 911. The man wanted to get up and she told him to wait for the ambulance. He got up and was belligerent. She then called her supervisor, Shanahan, which she said was policy. She said the accident was a block away from the 90 Precinct.

She also called DETF because she knew some members of the Department there, in the hope of getting a quicker police response. An ambulance arrived and then the police unit. She was asked for her license and registration but said she first notified the officer that she was an agent, which she said was policy because she carries a firearm.

She said she explained that there would be no insurance card because the vehicle is government owned and self-insured. As far as she knew the officers took a report.

Shanahan arrived about 15 or 20 minutes later to inspect the damage. At that time the ambulance and the police unit had left. She was also told by Shanahan to get a copy of that accident report that day. She waited until later in the day to go to the precinct to get the report.

Shanahan had called her and told her that a unit would be outside the precinct waiting for her and he gave her the patrol car's number. She saw that vehicle outside the precinct and there were two officers inside. She recognized one of the officers, Respondent, from a previous incident where she had gotten a report. She said she asked him for the accident report, he said he had it and gave it to her. She thanked him and left.

When she returned home she called Shanahan as he had instructed her to do but she had noticed that her address was on the report including her apartment number. She noted that usually her work address is listed. Porras pointed this out to Shanahan who instructed her to go back to the precinct and get the report changed.

She went back to the precinct and as she only had Respondent as a contact she asked for him. He was not there at the time and she was told to wait. After about 15 or 20 minutes, Respondent walked in. He asked her why she was there and she told him that the report had her home address and that should be changed. He had coffee and "stuff" with him and a tray. He asked her to give him a minute and to have a seat.

She said at that point she waited about five minutes when he came back, took the report and left again. She did not see him. After about 15 minutes he came back and gave her the report.

She said she looked at it briefly and then recalled that she had also told Respondent that there was another issue with the report as the pedestrian's address was under her name and her address was under his name. She had asked him to fix that as well.

Porras testified that at no point did Respondent ask her for the details of the accident and that at no point did she provide him with the details of the accident.

On cross-examination, Porras testified that the officers who responded to the scene of the accident were female. She said she only saw one officer, a black female [Police Officer Kamilla Williams]. She said she had a conversation only with that officer. Porras agreed she told that officer what had happened. She agreed that the pedestrian had been "looking around." She agreed that she told the officer that the man was looking up at the sky as if he were not paying attention.

She stated that the Assistant Department Advocate had not shown her two accident reports before her testimony. She said she understood that she was testifying because there are two accident reports.

She agreed that while at the scene she was "concerned" as she had hit a man who was lying on the ground and who was a senior citizen. She agreed that he was irate. She denied telling the officers that she was upset because she was going to get in trouble with her job.

She denied ever telling the officer that she was going to get promoted in six months and that this might affect her promotion. She denied asking the officer how she was going to prepare the report. Porras agreed that she had made a comment to the effect that she was not supposed to be driving the car that day but denied making the comment

to the officer, describing it as “thinking out loud.” Porras again denied saying anything about a promotion to the officer. Porras denied that she was up for promotion at that time.

Porras recalled that there was investigation by the federal government and that there had been questions about what she had said to the female officers. She said she recalled stating that she should not have been driving the car but she did not say it to the officer. She again denied ever saying that she was going to get in trouble with her job. She also again denied speaking about a promotion.

Porras agreed that she went to the 90 Precinct to get the accident report several hours after the accident. When Respondent was pointed out to her in the courtroom by his counsel she said she did not recognize him with the beard he now has.

She denied telling the black female police officer that at the time of the accident she had been making a U-turn. She denied that she had wanted the female officers to write the report so as to show that she was not responsible for the accident. She denied ever asking Respondent to do that.

Porras denied sitting down with Respondent at the precinct, stating, “I sat down, he took the report and left.” When asked again she stated, “I sat down, and there is an area there with desk and chairs. I gave him the report, he took it, left, came back, and I got the report, and I said thank you, and I left.”

Porras stated that the only conversation she had with Respondent was to give him her address, date of birth, her driver’s license number and the “addresses that were incorrect.” She said that was the only conversation they had.

She again denied that she asked him to change the accident report so that she would not be at fault. She denied ever getting another copy of the report from anyone else in this Department.

Sergeant Francesco Frangella

Frangella has been assigned to IAB for about five and a half years. He was involved in the investigation of Respondent regarding the accident report. He said that when the pedestrian who had been hit by Porras' car went to the precinct to get a copy of the accident report he met with the officer who was originally at the scene. She went to get him a copy of the report and realized that it was not the report she had filled out. She notified a supervisor who in turn notified IAB.

During his investigation he conducted an official Department interview of Respondent which occurred on November 18, 2011. Respondent was represented by counsel at that time (audio recording and transcript of the interview, DX 2A and DX 2B).

Frangella was asked to identify a statement made by Respondent in the interview that he believed was false. He read the following:

I went to the stationhouse looked in the bin where the accident reports were. It wasn't there at the time. She had the information of the person that either struck the car or that she struck, I forgot the particulars offhand, the pedestrian, so I started just scratching out another report and was going to get her a number and give her the report.

He said this contradicted his investigation in that after Porras picked up a copy of the report she called her supervisor and notified him that it contained her home address and that she had gone back to the precinct to get Respondent to change it to her work address.

Frangella read another part of the interview where he confronted Respondent with a statement by Porras in which Porras had said Respondent had offered to change the report to make the pedestrian and not her responsible for the accident. He then read from Respondent's answer, "I don't remember that but I just went off what she told me. That's what I wrote down in the narrative."

Frangella said this contradicted what he had learned from Porras about their interaction in which she had said that she only wanted the address changed. Additionally, Frangella said he learned that there was a difference between what the officer who filled out the accident report had originally written and what was in the accident report that was given by Respondent to Porras. "From reviewing all the accident reports that I saw." Frangella agreed however that he never reviewed the original accident report as it was never found.

He explained that after the pedestrian went to the stationhouse for a copy of the report, Williams prepared a second accident report, (DX 3, and coversheet which explains the various codes on the form, DX 3A).

Frangella explained that the code on the Williams report blamed the accident on Porras' failure to yield right of way, while the code on Respondent's accident report (DX 4) cited pedestrian error or confusion. Respondent, Frangella testified, agreed that he had prepared the report which is unsigned and lists Williams as the reporting officer.

On cross examination, Frangella agreed that the accident happened in March 2010 and that IAB did not commence its investigation until September 2010, about six months later. He agreed that the investigation was started by Williams when the pedestrian went to the precinct to get a copy of the report which was within a few days

after the accident. The case was initially investigated by the 90 Precinct Integrity Control Officer (ICO) before it was referred to IAB.

Frangella agreed that both accident reports state in the narrative that the pedestrian looked up at the sky and then continued to cross the street. He denied that the two reports were exactly the same but said there were similarities.

Frangella agreed that the report prepared by Respondent did not purport to have Williams' signature on it but has her name printed. He agreed there was no claim that Respondent tried to sign Williams' name.

Frangella agreed that he never saw any original accident report nor had anyone connected with the investigation. He agreed that he only knew of the report because Williams told him about it.

On questioning by the Court, Frangella indicated that he was not certain who had read what Porras had said about her meeting with Respondent when he was asked to comment on her statement. He said it could have been him or the other sergeant present at the interview. He agreed that he was present when Porras had been interviewed by her own agency. He agreed that in the statement posed to Respondent it was alleged that Porras had said that Respondent had brought her inside the precinct.

Sergeant Rosemary Davis

Davis has been assigned to the Chief of Detectives for eight months and before that she was assigned to Police Service Area (PSA) 8. On September 12, 2011, she was the desk officer there. At some point in the morning she was made aware of the fact that Respondent was not at his assignment in Viper 4. He was supposed to have been on duty

at 0700 hours. She checked roll call to find out if he was in court, she called Viper 4 back to see if they had heard from Respondent, she called the Sick Desk, the courthouse and did her research as to where he might be.

At about 0900 hours she called his resident command and spoke to the desk officer. Around 1000 hours she received a call from the patrol supervisor who was knocking on Respondent's residence door. She said she could actually hear him knocking on the door over the telephone. There was no response.

Approximately 15 minutes later, Respondent called and apologized for not calling earlier. He told her that he had just finished waking up and that he needed to take the day off. She said she did not grant him the day off. She did not recall if he ever showed up for work that day. She did not know if another officer had granted him an emergency day off (E day) that day.

She stated that there was no record of Respondent calling the command earlier in the day and she noted that he apologized for failing to do so when she spoke to him and also told her he had just woken up.

She did not know if he was home at the time the patrol supervisor was knocking on his door.

Lieutenant Dennis Azambuja

Azambuja has been assigned to PSA 8 for five years. On March 8, 2012, he said, he went to Viper 4, which is within the confines of PSA 8, to sign the command log. He said he was there for an hour or so at about 8:00 or 9:00 in the morning. As he was going to leave he saw Respondent, outside, leaving Viper 4. He asked Respondent where he

was going and Respondent told him that Sergeants Christopher Groben and Ricardo Campos had worked out a deal whereby if he was on time for work he could take lost time to go to the Holy Name Society breakfast.

Azambuja said that after Respondent left he went to check out his story. Campos, the administrative sergeant denied making such an arrangement. He then reached Respondent by cell phone and told him that he was to come back within the hour and that it would be considered his meal period. Respondent did not return within an hour and the duty captain was notified. Respondent returned later that day.

Azambuja also spoke with Groben, the Viper sergeant, who told him that he had told Respondent that he could have the lost time if it was acceptable to the lieutenant, meaning him, Azambuja. Azambuja said that he had not given permission because he had been told by Respondent that he already had permission.

On cross-examination, Azambuja agreed that there was a Holy Name Society breakfast that morning. He agreed that he now knows that Respondent had been involved in that organization. He agreed that it seemed that there had been a conversation between Groben and Respondent. He also acknowledged that Respondent returned later in the day.

On re-direct examination, Azambuja asserted that Groben did not have the authority to grant lost time and that those requests had to go through the PSA 8 desk.

Sergeant Christopher Groben

Groben is currently assigned to the 49 Precinct. On March 11, 2012, he was working in Viper 4. He said he was off duty that day when Azambuja contacted him.

Azambuja asked him if he knew anything about Respondent having the authority to take lost time.

Groben said he had spoken to Respondent a day or two before. Respondent had told him that he had a ticket to attend a Holy Name Society function and that the Administrative Guide gave him authority to go. Groben said he did not check the guide on that issue. Respondent had told him that he had been denied the day off by the commanding officer (CO) but asked if he could take lost time.

Groben said he told Respondent, "I don't have a problem with it but obviously since I am not working you have to run it by the lieutenant."

Groben said that as a supervisor in Viper he did not have the authority to approve a request for lost time. He said there was a Department memorandum (UF-49) in the office stating the rules as to who to contact regarding days off.

Groben said the UF-49 was generated in "March of -- January of 2011." It said that an emergency or request for time off during a tour had to go through the [PSA 8] desk officer or the lieutenant.

On cross-examination, Groben acknowledged that he had a conversation with Respondent about the Holy Name Society breakfast and that he was aware that Respondent was affiliated with that organization. He also knew that Respondent had a ticket for the event. He was aware that Respondent had put in a Leave of Absence Report (UF-28) two times.

As to when the UF-49 about who had authority to issue lost time was posted Groben testified, "It was revised, but there was always a 49 indication who to contact in

case of an emergency or lost time. It was by the supervisor's desk which all the officers can see."

Groben agreed that many UF-49s were up there at the time. He also agreed that there was a new UF-49 posted after this incident.

Sergeant Ricardo Campos

Campos has been at PSA 8 for about three years. He is the administrative sergeant and as such he handles communications, covers the Viper schedule and oversees any other administrative tasks at PSA 8. On March 11, 2012, he received a phone call from the platoon commander, Azambuja at about 10:00 or 10:30 a.m. asking if he had approved Respondent's request for lost time. He said he did not. He noted that Respondent had asked twice to take off that day. He had had a conversation with Respondent after he faxed back the second disapproval. He believed that requests had been made on March 5 and March 8 and they had been denied by the CO, Captain Maloney. He did not discuss the matter of lost time with Groben. Campos pointed out that he was off that day and repeated that he did not give approval.

He had conversation later that day with others about the matter including the duty captain.

On cross-examination, Campos said he had had one conversation with Respondent about lost time for that day. He said two requests had been made but these were done in writing and sent to the command. He said it was faxed back disapproved. He agreed a second request was faxed back disapproved after which Respondent, he said, called him.

Campos denied that he told Respondent that the captain disapproved his request for lost time because he had taken cash overtime. He said it was denied because of excessive lateness at the command. He said this came from the captain and he asserted that there were numerous latenesses at the command at that time. Campos said he had issued Respondent a command discipline for latenesses. He did not recall how long ago that was.

Lieutenant Karl Webber

Webber has been with PSA 8 since 2006. He is the operations coordinator responsible for scheduling officers, details and patrols, and “anything within the command itself.”

Webber testified that Respondent had submitted a UF-28 for February 7, 2011, the day after the Super Bowl. Because of manning issues that request was denied a week before the date. When Webber arrived to work on, February 7, he learned that Respondent had called in overnight and requested an E-day for the same day which had previously been denied. The E-day had been granted.

On cross-examination, he said that he did not personally deny the original request for the day off but that it had been done through his office. That request had been in writing and would have been more than five days before the date. He said the next request, for an E-day, was made and granted before he got to work Monday. He did not know who granted it.

Webber stated that he denied the original request for the day off, but not the E-day. He did not know what the basis for the E-day request had been. He also said that by Respondent taking the day off they were below minimum manning in Viper 4 that day.

Respondent's Case

Respondent testified on his own behalf.

Respondent

Respondent is 39 years of age and has been with the Department for about 19 years. After completing the Police Academy, he was assigned to the 79 Precinct, then the 83 Precinct, then OCCB, then the 83, then back to OCCB, Viper in Manhattan North, then the 90 Precinct, Viper in the Bronx and now Brooklyn Central Booking.

Respondent is familiar with the charge that he stole approximately \$28,506 from Vigiano. He denied doing so. He said they met while on vacation got intimate and started dating. He said this was in 2006. He said they started living together at her house in Medford.

Respondent agreed that he used Vigiano's credit cards during the period for January 1, 2007 and November 30, 2007. He said he had authorization to use credit cards, debit cards and a regular bank card.

He explained that the reason for this was that he needed gas and that he was not used to commuting. He said he was given a credit card to get gas to go back and forth. He also said, "If I was out doing something, I could use the ATM card to purchase anything I needed. Um, you know; if I was with the kids, use it on the kids."

He explained that Vigiano had three boys and he agreed that he spent money on them as well. He said he did not make a secret of his use of the cards. He said that Vigiano kept the card in her purse, on the kitchen counter or the kitchen cabinet.

He agreed that in November 2007 she confronted him about the use of a particular card. He said this was because he “overdrew too much money from one bank account.” This was the account she had with her mother. He did not make any secret of the fact that he had used the card. She did not call the police or district attorney and he continued to live with her after the discussion about the card. He said he was with her until before Christmas in December 2008. He said at that time he ended the relationship. He said that she was mad but did not want to end the relationship.

He said he never moved out but simply did not go back. He was never contacted by the police or district attorney about the money and he was never sued for the money. He was aware that Vigiano had retained an attorney at some point.

Respondent agreed that he signed a piece of paper for Vigiano. He said he signed it because Vigiano was very irate arguing and he was just trying to calm her down. “I felt I had overstepped my bounds a little bit, so I was just trying to keep the relationship going.”

He again asserted that the relationship continued. He said he paid Vigiano back in “cash or checks.” He did not make Vigiano sign a receipt when he paid her back. He said, “I probably gave her back 7 or \$8,000.”

He said the first time he became aware that he was being accused of stealing was later when IAB advised him, more than 18 months after the November 2007 incident.

Respondent said he met Porras in March 2011 but that he had also met her once before when her car had been broken into.

On the day of the accident report incident he had been contacted by Cutty, the DETF detectives' union delegate. He said there was an accident involving a DEA agent and he just wanted her to get a copy of the accident report to give to her supervisor.

Respondent said he could not find the report. He called Cutty who told him to see if he could find something. He said that he turned to Porras and asked her if she had any information about the accident.

Respondent explained that he had looked for the report in the 124 Room and at the desk. He said there is a mailbox in the 90 Precinct where they keep the accident reports. He said he looked in the bin for the report and was not able to find it.

Respondent asserted that his statement that he got the information for the accident report from Porras was true. He said that he first saw Porras at the precinct. He said she came into the 124 Room and provided him with information for a report after he could not find one. He agreed that he prepared the report which is in evidence (DX 4). He said he wrote the narrative based on what she had told him. He said he filled in the box blaming the accident on the pedestrian based on what she told him. He said it was based on her statement to him that the pedestrian was crossing the street then stopped and was just looking up. He said he believed he used the correct code. He said Porras did not ask him to change the report to put that code in.

Respondent was then asked what the main thing Porras was concerned about getting changed in the report and he testified, "She came back to me. I also got a phone call. She wanted her address changed. I had put down her home address."

He understood her concern as she was an undercover officer. He also knew that police officers use a Department facility as the address in an accident report. He used the address of the DEA office in New York.

As to the second alleged false statement Respondent stated that he just "went off" what she had told him and that there was nothing false in the statement.

Respondent also recalled that he had heard testimony from Davis concerning his not being present for duty on September 12, 2011. He recalled her testimony that somebody had gone to his door and knocked on it. He explained that he was not home that morning and that he was at his cousin's house in [REDACTED] He said that earlier that morning, at about 6:45 am, he had called in to request an E-day. He did not call in for an E-day because he heard someone knock at his door.

He had not filled out a UF-28 the day before. He said that Azambuja had granted him the E day on that day. He said this occurred without difficulty.

With regard to March 11, 2012, Respondent indicated that was the day of the Holy Name Society breakfast. Respondent had put in a UF-28 for that day and it was not granted. He put in a second UF-28 for the day and again it was denied. Respondent said he spoke to Campos. He told Campos that the Administrative Guide provided that if there was manpower in the command the CO could grant a day off. Respondent claimed that Campos told him that the CO was going to make him suffer because he had taken overtime in cash. Respondent agreed that he had taken overtime in cash earlier in the year.

Respondent said he also spoke to Groben about getting time off for the Holy Name Society breakfast. He said Groben said he would see what he could work out with

Campos. He said Groben called him back and told him to be sure to get to work on time and if there was manpower he would be able to take "lost time" and go to the breakfast.

Respondent said he took "lost time," went to a church in Queens Village and then to the breakfast which was two blocks away at Antun's.

Respondent said that while he was about to sit down for breakfast he received a call and was told that his "lost time" had been denied and that he had to get back to work. Asked if he went back to work Respondent stated, "Eventually, I ate my breakfast because I paid \$50 for it."

He then went back to work. He was ordered by the duty captain to fill out a UF-28 from 9:00 a.m. to 1:00 p.m. and he did not get paid for the time he went to the breakfast.

Respondent said that as he was leaving for the breakfast he ran into the lieutenant and he told him he was going to the breakfast. Respondent said the lieutenant told him it was alright. He had asked him who authorized it and he said he told the lieutenant that Groben had spoken with Campos and that they had worked it out. He said that he was told that as long as he was on time and there was manpower all he had to do was fill out a UF 28 and fax it over. He said the lieutenant said this was okay.

Respondent recalled that there was testimony about a UF-49 that was posted in the command explaining who could give permission for "lost time." Respondent said that the UF-49 was posted after this incident and not before.

Respondent also testified about an incident on February 7, 2010, the day after the Super Bowl. He said he had requested the day off by submitting a UF-28 about five days

in advance. Because he was in a satellite command he faxed it over. He was notified by Azambuja that it was denied.

He never requested an E-day prior to the date. He said that at about 5:30 or 6:00 a.m. of February 7, 2010, he was not feeling well and requested an E-day which he said was granted.

With regard to his plea to many instances of lateness and failures to appear at roll call, Respondent stated:

Failing to appear at roll call usually was because at the 90 [Precinct] I was the PBA delegate, still currently I am. If I had something going on when I walked in, Inspections was upstairs from us, so I would try and alleviate things by going up to find out what's going on with the cops, CO's office, ICO's office, or in the locker room speaking to other officers.

His claim was that he was in the building and doing his work as a PBA delegate. As to the longer latenesses, he admitted to those events.

On cross-examination, Respondent agreed that he issued the false summonses to boost his numbers whether it was called a quota or productivity goal. He said he used plates that were still on junked vehicles and registration stickers that were on those vehicles.

As to the computer misuse, he said he ran his mother's name and her license plate number because her license was suspended for tickets. He said that once it did not come back and he believed he hit it several times. He said he did the same thing for himself. He said he was running his name and license plate number for a Department restricted parking permit. He said that you have to hand a copy of your NYSPIN report to the ICO.

Respondent said there was nothing wrong with his running his own name and that he had pled guilty because he admitted he had no reason to run his mother and both were on the same specification. He said other officers ran their own names for this purpose and that he did not know of any other way to find out if he was a scofflaw.

Respondent agreed that on July 15 2010, he filled out a criminal court summons. He did not recall the crime. He agreed that he wrote out a summons returnable on a day the court was closed. He said the sergeant at roll call would tell them what the return date for criminal court summonses was. Respondent took responsibility but agreed with the Department's assertion that it was partly the sergeant's fault.

Respondent testified that with regard to being absent without leave on August 23, 2010, he said he spoke to the desk officer and the sergeant said it was okay to have the day off. Respondent said he pled guilty to that date because he did not want to get the sergeant who gave him permission in trouble. He said he did not realize that 18 months had passed and the sergeant could not get into trouble.

Respondent agreed that he did not go to traffic court on March 31, 2010, and August 25, 2010. He "guessed" that he got proper notification and said that he forgot.

With regard to his numerous latenesses attributed to his missing roll calls, he said he could not explain to his CO that he was doing union work because "[y]ou couldn't deal with my CO" and that the executive officer ruled "with an iron fist." He said he spoke to numerous people in command and no one could do anything under the rule of that CO. He did not call IAB.

Respondent agreed that he had wanted to take February 7, 2011, off. He denied that he wanted to go to a Super Bowl party. He said his desire to take off had nothing to

do with the Super Bowl and that he did not even get to do that because he was sick that day. He said he requested the E-day because he was sick. He said that he did not use a sick day because he was had his regular days off (RDOs) Tuesday and Wednesday and "I wasn't looking to spend my RDO's confined to my house."

He said the midnight sergeant granted him the E-day. On questioning by the Court he not did remember telling the sergeant that he had requested the day off and it had been denied.

With regard to his latenesses Respondent denied that he never called even when he was four hours late, saying, "If I was late I would call." He said he if he was going to be late he would have to take lost time.

Respondent stated the on September 12, 2011, he got up at 6:45 a.m. and was granted an E-day by the lieutenant. He said that he originally told Davis that he had gotten an E-day, and she had told him that she had spoken to the lieutenant and the lieutenant had said no. He said he then called the lieutenant who said it would not be a problem and that he would take care of it. He agreed the lieutenant involved was Azambuja.

Respondent agreed that Campos had denied him lost time twice when he had submitted UF-28s. He agreed Campos had told him that the CO was angry at him. When asked why then did he go to Groben, Respondent stated that Groben came to him and said he would see what he could do. Respondent disputed Groben's testimony that he had said Respondent would still have to speak with the lieutenant. Respondent claimed that Groben had given him "lost time" before. He said it was only later that he was told that none of the Viper supervisors could give him time off.

Respondent asserted that he did not steal any money from Vigiano. He agreed that he had repaid her some money. Respondent asserted that he signed the statement presented by Vigiano on the day after she discovered the loss. Respondent denied that Vigiano threatened to go to the police and he asserted that he did not sign the document because she had threatened to go to the police. He stated, "I signed in because I felt I was somewhat wrong, and I wanted to keep the relationship going." He said by "somewhat wrong" he meant that he had "overstepped" his boundaries a little bit, "taking more than [he] should have."

He did not know the right amount he should have taken. He said he used it to pay bills and he paid her back money. He said he did contribute to the household expenses while he lived with her. When asked if he contributed to those bank accounts he answered, "No, not that I know of."

Respondent said that among the bills he paid were car bills and car insurance on his car. He also said he used a credit card to pay for gas going back and forth. He also stated that he used money from the Commerce Bank account to pay for his car insurance and other car bills. He said he did not use it for other personal bills but that he used it for the kids too. He said it was the main account he used.

On questioning by the Court, Respondent denied that he took \$28,000 and said, "I think my personal belief the whole time throughout that year, maybe \$8,000 came out of there because there was four other bank accounts and credit cards to use."

On further questioning by the Advocate, Respondent agreed that he signed the statement willingly and voluntarily.

With regard to the accident report matter he agreed that he looked in the box and could not find it. He said he did look for Williams but found out she had left for the day. He did not have her phone number. He said he asked someone to call her but “they didn’t get in touch with her.” He did not speak to the desk officer. He did not speak to his supervisor. He did not speak to the Highway Safety Unit but pointed out that they work days and were gone.

Respondent agreed it would have been easy to tell Porras to come back the next day. He agreed that he did another report. He agreed that he knows that only the officer who actually wrote the original report is authorized to write an amended report. He agreed that even with 16 or 17 years on the job he still decided to do it.

Respondent agreed that after Porras left he found the original report and he either stapled it or clipped it to the report he wrote. He agreed that he never told anyone this until his official Department interview.

On questioning by the Court Respondent agreed that there was indeed a report that had been prepared by Williams on the scene of the accident. Respondent denied destroying the original report. He did not know what happened to that original report. When asked if he thought it was a coincidence that the original report disappeared, he answered, “Yes.” He did not learn that the pedestrian had gone to the precinct looking for the report until he learned of it at his official Department interview. He also said he did not know of the investigation until that time.

He said he did not make Porras come back the next day because he was giving a courtesy to another agency. He said that he “imagined” that Porras lied when she said he had given her the original report.

Respondent testified:

The changes I made was when she came in looking for the report and we couldn't find it, I filled out the report and I put down the information of the pedestrian on her side. She noticed it, and she came back. So I'm the one who changed that part of the report to put down her she also requested that I put down her work address.

Originally, on the first one I filled out I filled out two that day. The first one I filled out, I put the information of the pedestrian on the registration side of the agent's information.

The first one I filled out well, it had her personal information on it, also, so I said you take it and destroy it.

Respondent agreed that when Porras left she had two amended copies of the report that he had made.

After a discussion at the bench Respondent was further questioned on direct examination by his attorney.

Respondent recalled that Vigiano had testified that between January and November of 2007 approximately \$28,000 was taken out of an account. Respondent did not dispute that Vigiano is correct about that. He agreed that he said that he had overstepped his bounds and explained that he was referring to \$8,000 of that amount. He agreed that he probably should not have taken \$8,000 of the \$28,000.

On questioning by the Court Respondent was asked if he had taken, using the card, \$28,000 from the Commerce Bank account. He responded, "No, I didn't take out \$28,000." When asked how much he took out he responded, "I'd say between 7 and \$8,000."

When asked if he had just answered a question from his attorney in which he agreed that he had taken \$28,000 Respondent explained, "I thought what he was talking about was the --- excuse me, the charge." He testified, "When I signed the paperwork with Ms. Vigiano, I told her about \$8,000 and she said \$28,000. That's what she wrote down on the paperwork that I signed between 8 and 28,000. I don't remember the specifics 28,000 whatever it was."

Respondent again asserted that he used that account but that he did not take out \$28,000.

On further questioning from his attorney, Respondent agreed that the agreement he signed said not less than \$8,000 and no more than \$30,000. He agreed that those numbers were put down because he did not really know how much he had taken out of the account.

Respondent agreed that he did not think he took out more than \$8,000. He said that he was not sure if \$28,000 had been taken out of that account between January and November but denied that he took out that amount of money.

FINDINGS AND ANALYSIS

Respondent is charged in five separate disciplinary cases. Several of these cases relate to on-duty misconduct and Respondent has pled guilty to many of the specifications in those cases. One case deals with an alleged false statement made during an official Department interview. Another case involves an alleged theft from a former member of the service whose husband, also a member of the service, was killed in the

line of duty on September 11, 2001. Because of their significance, I will deal with the last two specifications first.

Disciplinary Case No. 2011-6736 - The Accident Report Case:

On March 11, 2010, DEA Agent Porras had an accident in which she struck a pedestrian with her agency vehicle. She was apparently off-duty at the time. Two patrol officers from the 90 Precinct, one of whom was named Williams, responded to the scene. Porras called her supervisor Shanahan, who arrived on the scene after Williams and her partner left. Shanahan called someone he knew in this Department. The purpose of this call was to have someone help Porras get a copy of the accident report to file with her agency. Respondent was contacted by Detective Cutty, who was a detectives' union delegate and asked to provide this assistance to Porras. It is at this point that the stories diverge.

Porras testified that she was supposed to meet Respondent outside the precinct in a patrol car. She said she walked to the precinct and saw the car, whose number she had been given. She said she told Respondent, who was in the vehicle, that she was from the DEA and he handed her the report. She left without ever entering the precinct.

At some point she looked at the report and discovered that it listed her home address which caused her concern for privacy reasons. She went back to the precinct and asked for Respondent. She was told that he was out and she waited about 15 or 20 minutes for his return.

Porras said that when Respondent returned he had coffee and "stuff" with him. When he saw her he asked what she was doing there and she showed Respondent the

problem with the address. He told her to wait and walked off. About five minutes later he returned to her, took the papers and went off again. After about 15 minutes he returned.

Porras testified that she had also told Respondent about other problems with the report such as the fact that the pedestrian's address was under her name and her address was under his name but she denied that she ever told Respondent about the accident itself.

Respondent, for his part, said that he met Porras outside the precinct. He took her inside. He looked in the box for the accident report and was unable to find it. He said he then took Porras into the 124 Room, obtained information from her about the accident and wrote up an accident report.

There is, however, a difference between what Respondent said at his official Department interview and what he said at this trial about how he came to put Porras' work address on the accident report he prepared. At this trial, Respondent testified that after he wrote the report Porras came back to him and pointed out that he had put the pedestrian's information under her name. He had also used her home address and she wanted her work address used. He said he replaced the report he prepared the first time with a corrected one.

During his official Department interview Respondent was asked if Porras asked him to change the report so as to list her work address and not her home address. Respondent answered that she did not ask. He said she had told him that she was an undercover officer and he used the work address because that was the practice with undercover officers (DX 2B p. 26).

During both his official Department interview and his testimony in this trial, Respondent said that he later located the original report and either paper clipped it or stapled it to the report he had prepared. The original report has apparently not been seen since.

There is no question that at some later point in time, when the pedestrian came in to pick up his copy of the report, he was given a report prepared by Respondent. That report listed him as being at fault for the accident. When he complained, the issue of the redrafted report came to light. The officer who had responded to the scene and who had prepared the original report, Williams, prepared another report, to replace her original report. In that report she faulted Porras for the accident. She also made notifications which started the investigation into this matter.

On November 18, 2011, Respondent was subject to an official Department interview. Among other things during the interview Respondent denied knowing it was wrong for him to have prepared the accident report. It is his statements during that interview that are the subject of the instant charges.

While the specification itself does not explain what the specific alleged falsehood or falsehoods were, in a Bill of Particulars the Advocate set forth the following as the alleged false statements:

A). I went to the Station House, looked in the bin where the accident reports were. It wasn't there at the time. She had information of the person that either struck the car or she struck. I forgot the particulars offhand—a pedestrian—so I started just scratching out another report and was going to get her a number and give her the report.

B). I just went off of what she told me. That's what I wrote down in the narrative.

The obvious significance of these statements is that Respondent claimed not to have the original Williams report when he prepared his report, something he asserted repeatedly throughout the interview. As will be seen, there is ample evidence that he was in possession of that report and that the statements made at the official Department interview were untruthful and misleading.

First of all, there is Porras' testimony. Her version of events is clear and makes sense. She had no apparent motive to lie. Respondent on the other hand has provided inconsistent versions of the events, one of which had him preparing two duplicate reports. But Respondent's inconsistencies go even further.

In his statement at his official Department interview, Respondent mentions only one contact with Porras at which time he gave her a report which listed her work address and not her home address. He even went on to volunteer that he did this on his own initiative. If Respondent only met Porras on one occasion and gave her the accident report with her work address on it there would have been no need for her to go back and get a corrected report.

This is of course in direct conflict with Porras' claim that the first report she picked up had her home address and that she had to go back to the precinct to get another copy of the report with her work address. This claim by Porras is corroborated by Shanahan who testified that he spoke with Porras and told her to go back to the precinct and have the report changed to reflect her work and not her home address.

Shanahan is an extremely credible witness. He had no interest at all in the events of this case. His testimony is strong and reliable evidence that the first report Porras left

the precinct with had her home address. This evidence is in conflict with Respondent's statement during his official Department interview.

When Respondent testified at this trial his testimony was that Porras, after being given a copy of the accident report by him, came back to get the address straightened out. What is odd about this testimony is that it has no detail about when that happened or the circumstances under which it happened. Respondent even discussed giving Porras two versions of the accident report he prepared, one with her home address and one with her office address, suggesting that she destroy the one with her home address. Nothing like this was mentioned during Respondent's official Department interview which went into great detail about the events of that day. Respondent has therefore provided two versions of the events which are not only different from each other but actually conflict with each other. Both of Respondent's versions are different than Porras' version of events. Respondent's second version, the one given at this trial, seems to be tailored to meet the evidence provided by Shanahan which confirms that Porras had originally received a copy of the accident report with her home address.

Based on this overwhelming evidence that Respondent was not truthful at his official Department interview, he is found Guilty of the single specification in this case.

Disciplinary Case No. 2011-5328 - The Larceny Case

It is undisputed that Respondent and Vigiano began their relationship during a visit both of them took to New Orleans some time after Hurricane Katrina. Respondent, who had resided in [REDACTED] with his grandmother, essentially moved into Vigiano's home [REDACTED]

During the period of their relationship, Respondent also developed a relationship with her three children. Vigiano gave Respondent access to at least one of her ATM cards by providing the PIN number to him. Indeed it is on this issue that the testimony of Respondent and that of Vigiano begin to differ.

Vigiano testified that she only gave him authorization to use one card for her Citibank account. She denies giving him access to any other card including the card for the Commerce Bank account which is at issue. Vigiano testified that Respondent took in the vicinity of \$28,500 out of that account. Respondent testified that he had authorization to use that account. He does, however, acknowledge taking too much money but put the figure at about \$8,000 which he said he paid back.

Respondent argues that there was no larceny. In making the argument he notes that Vigiano never pressed criminal charges against Respondent. But that, in and of itself, is not a measure of whether a larceny was committed. Vigiano explained that she was embarrassed by the situation and did not want it to be known. She did, obviously, report it to this Department but reporting the alleged larceny was not the reason for her call. She called the 90 Precinct to get word to Respondent that she did not want his car registered at her house. In the course of discussing Respondent with the lieutenant at the precinct the matter of this account came up and the Department moved on the larceny as a disciplinary matter.

Respondent has also claimed that this was simply a misunderstanding between two people who had a relationship. This defense also fails. Respondent acknowledges he took money he was not supposed to have taken or, as he put it, that he had "overstepped his bounds." This appears to be just another one of Respondent's misstatements of fact.

Vigiano testified that she did not give Respondent access to the Commerce Bank account from which she discovered he had taken money and therefore that he had taken the money without permission or authority. I find Vigiano's testimony credible. She had no motive to lie. She was clearly not trying to be vindictive and to harm Respondent as it was members of this Department who took her statement and recognized its import. Nor did it seem that she was trying to use this case as a means of recovering monies from Respondent. Vigiano genuinely appeared not to want to deal with this embarrassing situation. All of these factors made her testimony extremely believable.

The document Respondent signed is not just an admission of wrongdoing but its language corroborates Vigiano's version of events.

There is, for instance, specific mention of the account at Commerce Bank. Respondent would have us believe that she had given him permission to use all of her bank cards. But her testimony is that she gave him only one card to use and that he was never given permission to take money from the Commerce Bank. The fact that only the Commerce Bank account was mentioned would tend to corroborate her statement and discredit Respondent's claim that he had access to multiple accounts.

There is also mention of the fact that the full amount of what was taken could only be ascertained by reviewing all of the bank statements. This, of course, corroborates Vigiano's testimony that she did not review the statements from the Commerce Bank account and did not know about the theft until she happened to look at a statement.

Respondent's claim that he only signed the document (DX 1) because Vigiano was upset is a further example of his dissembling because he acknowledged he took

monies he should not have. Vigiano's claim that he signed it to prevent her from reporting the matter to the police at that time is more credible.

Vigiano testified that the amount taken was about \$28,500 and Respondent does not deny taking about \$28,000 but claims that only \$8,000 was unauthorized, of which he claims to have paid back seven or eight thousand. Once again it appears that Respondent is being mendacious but even the unauthorized taking of \$8,000 would constitute larceny.

Respondent is found Guilty of the single specification in the case.

In Disciplinary Case No. 2011-6064 Respondent having pled guilty to Specification No. 1, challenged Specification Nos. 2 and 3.

Specification No. 2 in that case reads in pertinent part that on September 12, 2011, Respondent, after failing to report present for duty, did not request an E-day until approximately three and one-half hours after the start of his scheduled tour.

Davis testified that she was the desk sergeant that day. When she was informed that Respondent had not reported for his tour of duty, which would have started at 7:00 a.m. she began doing a search to determine where he was. She checked with roll call and the courts to see if Respondent could be accounted for. When she had exhausted all other reasonable avenues, she had a patrol supervisor from Respondent's resident command go to his home and knock on the door. That officer got no response. About 15 minutes later, she said, Respondent called. She said he apologized and said that he had just gotten up. He did not indicate where he was. He requested an E-day which she said she denied.

Respondent's version of events is that he was at his cousin's house in [REDACTED] and not at home. He said he had called in earlier in the day prior to the start of his tour and he had requested an E-day from Lieutenant Azambuja, which he said was granted.

Respondent's version of events is not credible. Davis testified credibly that she did a search as to Respondent's whereabouts that morning. If he had been granted an E-day, that information would certainly have turned up. The fact that he called the command a few minutes after the patrol supervisor had knocked loudly on his door is also troubling. Why would he have called in from another location if he had previously been given an E-day? Why would he have apologized to Davis and asked for an E day at that point if he had previously been granted one? His conduct as he explained it made no sense. Respondent is found Guilty of this specification.

Specification No. 3 of this case alleges that on March 11, 2012, Respondent "made false and misleading statements to Lieutenant Dennis Azambuja, PSA 8 Second Platoon Commander, regarding an alleged prior approval for lost time."

This charge involves an incident in which Respondent had bought a ticket for and wanted to attend the Holy Name Society breakfast. He said he put in a UF-28 for that day, which was denied. He said he put in a second request which was also denied.

Respondent claimed to have discussed the matter with Groben, who he said told him to make sure to get to work on time and further told him that if there was adequate manpower he would be given the "lost time" to go to the breakfast.

Groben, Respondent stated, had worked this out with Campos and that he had permission to go. Respondent said that he ran into Azambuja as he was leaving and

explained the situation to him. According to Respondent's testimony Azambuja gave his permission as well.

All of this is contradicted by Campos, Groben and Azambuja. Azambuja agrees that he ran into Respondent as he was leaving the command to go to the breakfast but he did not give his approval. The fact that he did not approve is attested to by the fact that he clearly began looking into the matter after Respondent left.

Groben gave credible testimony that he was off that day and, in any event, lacked the authority to give Respondent the lost time. Campos also denied giving an approval for Respondent's lost time.

I find the testimonies of Campos, Groben and Azambuja credible. Respondent, by his own testimony wanted to go the breakfast very badly. He had paid \$50 for a ticket. He even testified that when he was called on the telephone and told that his "lost time" had been denied he did not leave immediately and hurry back but finished his breakfast as he had paid for it.

This seems like another instance in which Respondent wanted something and when the Department got in his way he simply did what he wanted.

Respondent is found Guilty of this specification.

In Disciplinary Case No. 2010-2899 Respondent having pled guilty to Specification Nos. 1 through 5 has challenged Specification No. 6. That specification relates to February 7, 2011, the day after the Super Bowl. It alleges that Respondent, "after previously being denied a request for an E-day by a supervisor known to the

Department, did request permission for an E day from a different supervisor known to the Department.”

There are multiple problems with this specification as drafted. The first is that Respondent was not denied permission for an E-day. The testimony is quite clear that he requested a leave day, which was denied approximately five days prior to the day in question.

While this, again, may seem to be technical, the point of the specification as written is that Respondent was denied something by one supervisor and then simply went to another supervisor to get the same benefit. That is not the case.

Further there is no evidence that someone who has had a leave day turned down could not apply for an E-day if an emergency arose.²

Of course, in this case Respondent’s claimed emergency was that he was sick. That might constitute abuse of an E-day but that is not what is charged.

It is also worth mentioning that the Department stressed that this was the Monday after the Super Bowl. No evidence was offered to suggest that the desire to take that Monday off was in any way linked to the Super Bowl.

Respondent is found Not Guilty of this specification.

PENALTY

In order to determine an appropriate penalty, Respondent’s service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent

² Following the close of all testimony the Department attempted to amend this specification “to conform to the proof.” The proposed change would have noted that Respondent did not in the first instance request an E-day. In denying the motion I noted that same incorrect information was contained in a Bill of Particulars provided to counsel pre-trial and that to permit the change would result in a denial of due process to Respondent.

was appointed to the Department on March 3, 1994. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has pled guilty to and been found guilty of a number of acts of misconduct. In order to assess an appropriate penalty it is necessary to review these various acts.

Under Disciplinary Case No. 2010 1809 Respondent admitted to improperly utilizing a Department computer in that on February 8, 2009, he accessed the Department of Motor Vehicles database to query his mother's name four times and his mother's vehicle information three times. He also ran his own name and vehicle information one time each on that date.

In a separate specification Respondent also admitted to issuing "at least" 25 false summonses. These summonses, the Advocate indicated, were issued to people who did not exist. In his testimony, Respondent claimed these summonses were issued to junked vehicles that still had registration stickers in the window. The Advocate indicated that the November 18, 2009, date in the specification was not the date these summonses were issued but reflects the date Respondent was asked to provide proof of these summonses.

Under Disciplinary Case No. 2010-2899, which relates to events that occurred while he was assigned to the 90 Precinct, Respondent pled guilty to a number of acts of misconduct. In Specification No. 1 he admitted to failing to properly perform a street survey. It was explained that failure, which occurred in August 2010, was that Respondent was supposed to go to businesses in his sector, conduct a survey and report the results to the desk officer.

In Specification No. 2 Respondent admitted to issuing two Criminal Court summonses which were returnable on a date when the court was not in session.

In Specification No. 3 he admitted to missing a tour of duty. In Specification No. 4 he admitted to failing to appear in traffic court on three separate occasions.

In Specification No. 5 Respondent admitted to being late for work on 24 occasions between January 1, 2010, and May 1, 2011. Most of these involve Respondent's failure to be present at roll call. Two of the days involve significant lateness: March 14, 2011, a lateness of four hours, 20 minutes; and May 1, 2011, four hours, 30 minutes. Two others involve Respondent's lateness for official Department interviews: September 22, 2010, 26 minutes; and May 1, 2010, two hours, 20 minutes.

Under Disciplinary Case No. 2011 6064 which deals with events that occurred when he was assigned to Viper 4, Respondent admitted to being late for work on 17 occasions as follows:

August 5, 2011	Three hours, 23 minutes
September 19, 2011	Two hours, 30 minutes
September 26, 2011	30 minutes
October 9, 2011	One hour, 15 minutes
October 10, 2011	20 minutes
November 4, 2011	Four hours, 11 minutes
November 25, 2011	Three hours
December 8, 2011	35 minutes
December 10, 2011	One hour, 55 minutes
December 16, 2011	50 minutes
December 22, 2011	Three hours
January 4, 2011	45 minutes
January 8, 2012	Four hours, 15 minutes
January 16, 2012	Three hours 50 minutes
February 6, 2012	Three hours
February 18, 2012	Three hours
February 26, 2012	Two hours

Under Specification No. 2 Respondent has been found Guilty of calling in for an E-day three and a half hours after the start of his tour on September 12, 2011. While the misconduct here, by itself, may not be a major problem, in conjunction with his tardiness issues it is of greater significance. Additionally, the incredible explanation given by Respondent is, to say the least, troubling.

Under Specification No. 3 Respondent has been found Guilty of making "false and misleading statements to Lieutenant Dennis Azambuja, PSA 8 Second Platoon Commander, regarding an alleged prior approval for lost time."

Looking just at Respondent's on-duty misconduct, catalogued above, it is clear that Respondent does not conform to Department rules and procedures. There is also some evidence that at least some of his conduct involves intentional flouting of Department rules. This was made evident, for instance, in his testimony about the many instances where he was late for roll call. He claimed he missed roll call because in his capacity as union delegate he was dealing with issues. He continued to engage in this conduct in spite of the fact that he knew that he was being written up in the Minor Violations Log. When the issue was explored further, he blamed the problem on a strict supervisor. It would appear he wanted the Department to accede to doing things his way rather than the other way around.

Given his sick leave record and prior disciplinary history (see Confidential Memorandum attached hereto) Respondent's misconduct set forth up to this point would justify his dismissal from the Department and this is before discussion of the two most serious charges.

Respondent has also been found guilty of making a false statement at an official Department interview and of larceny. I will deal with these issues separately.

In Disciplinary Case No. 2011-6736, Respondent has been found guilty of “intentionally and wrongfully make false statements.” The Patrol Guide provides that an officer can be dismissed for making false statements during such an interview. Respondent was advised of this at the outset of the interview. While this penalty is not always imposed, consideration needs to be given to the significance and materiality of the false statement involved.

The Williams accident report in evidence faulted Porras for the accident while Respondent’s report faulted the pedestrian. The Williams report was prepared (again) after Respondent’s report was discovered. Her original report, which may have last been seen by Respondent, is now missing. The issue of who was actually to blame for the accident is not directly relevant to this case however if the original Williams report faulted Porras, then changing that would constitute a material and significant alteration of an official document which was filed with this Department and ultimately with the Department of Motor Vehicles.

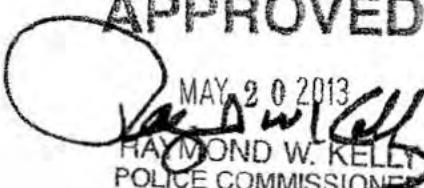
Reviewing the official Department interview, it is clear that the investigators were attempting to determine if this occurred. Respondent’s false statements were specifically designed to prevent the investigators from finding what actually happened.

Under these circumstances Respondent’s conduct on this specification alone would justify his separation from the Department.

Respondent has also been found guilty of larceny. Without a doubt this conduct, standing on its own, would justify Respondent’s dismissal from the Department. The

Department has a long history of dismissing or allowing vested retirement to officers found guilty of larceny. The reasons for this bear some mention. Police officers often find themselves in situations where they are entrusted with property of other individuals. Some examples of this are; property of victims of crime, property of those accused of crime, property of deceased individuals, proceeds of crimes including amounts of cash and contraband. The Department and the public need to be assured that all of these types of property will be appropriately safeguarded. Obviously, someone who has given into temptation in stealing someone else's property cannot be relied on in this regard.

As I have noted, there are several separate and independent reasons for separating this Respondent from the Department. Cumulatively, the reasons for dismissal are overwhelming. Dismissal is the appropriate penalty as punishment for what Respondent has already done. His separation from the Department is necessary because he has demonstrated that he can no longer serve in the capacity of a police officer. His conduct establishes that he is not willing to be bound by Department rules and regulations. He cannot be relied on to behave with integrity. He cannot be entrusted with property. His testimony cannot be relied upon for honesty. The only penalty that can be recommended is that he be DISMISSED from the New York City Police Department.

APPROVED

RAYMOND W. KELLY
POLICE COMMISSIONER

Respectfully submitted,

Martin G. Karopkin
Deputy Commissioner Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER TIMOTHY BERGIN
TAX REGISTRY NO. 906272
DISCIPLINARY CASE NOS. 2010-1809, 2010-2899, 2011-5328,
2011-6064 & 2011-6736

In 2012, Respondent received an overall rating of 4.0 “Highly Competent” on his annual performance evaluation. He was rated 3.0 “Competent” in 2010 and 2.5 “Competent/Low” in 2011. He has been awarded 17 medals for Excellent Police Duty and three for Meritorious Police Duty [REDACTED]

[REDACTED]

[REDACTED]

Respondent has been the subject of two prior adjudications. In 2000, he forfeited 30 pre trial suspension days and was placed on one year dismissal probation after pleading guilty to engaging in off-duty employment at a licensed premise. In 2008, he forfeited 25 vacation days after pleading guilty to operating a vehicle without insurance and with expired registration and inspection stickers and plates belonging to another vehicle. He also arrived to work late on two occasions but entered in his Activity Log that he was on time and failed to submit Leave of Absence Reports.

For your consideration.



Martin G. Karopkin
Deputy Commissioner Trials